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6 Attorneys for Defendant
7 TIME WARNER CABLE LLC

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11 MIGUEL CALZADA,
12 Plaintiff,
13
14 v.
15 TIME WARNER CABLE LLC, a
Delaware Corporation,
16 Defendant.

No. CV 11-01701-DMG(JCGx)

DECLARATION OF DAVID SU IN
SUPPORT OF DEFENDANT TIME
WARNER CABLE LLC'S OPPOSITION
TO PLAINTIFF'S MOTION FOR
CLASS CERTIFICATION

Date: January 6, 2012
Time: 2:00 p.m.
Crtrm: 7 (Hon. Dolly M. Gee)

DECLARATION OF DAVID SU

I, David Su, declare:

1. I am the West Region Senior Director of Product Management (“West Region Senior Director”) of Time Warner Cable (“TWC”). I have held this position since August 2006.

2. As West Region Senior Director, I oversee the provision of cable products and services to all of TWC’s residential subscribers in California. As part of my responsibility, I oversee the provision of certain communications to subscribers, including mandatory notices, billing statement messages, welcome kits, and other subscribers communications.

3. In preparing this declaration, I have relied upon my personal knowledge and my review of TWC’s business records, maintained under my supervision and control, including memoranda, reports and records of acts, events, and transactions made in the regular course of TWC’s business at or near the time of the act, event or transaction.

4. Among the records I have reviewed was the March 2010 “Bill Message Request Form” submitted to CSG Systems, Inc. (“CSG”), the company TWC engages to prepare and mail monthly billing statements. In order to communicate important information to its subscribers, TWC regularly inserts “statement messages” into its monthly billing statements. To ensure CSG includes the required statement message on subscribers’ billing statements, it is TWC’s regular practice to fill out and submit “Bill Message Request Forms.” These Bill Message Request Forms include information such as the request date, the message priority, the English/Spanish text of the message, and the division, system/principals, and agents (areas of service) (collectively, “SPA”) that should receive the statement messages.

The Subscriber Agreement

5. As the West Region Senior Director, I have personal knowledge of the purpose, use, and effect of the Residential Services Subscriber Agreement (“Subscriber Agreement”). I regularly review and reference the Subscriber Agreement in the performance of my job duties. The Subscriber Agreement governs the duties and obligations of TWC and its subscribers concerning the delivery of cable services. A true and correct copy of the current Subscriber Agreement is attached to the Appendix of Exhibits as **Exhibit G**.

6. As the West Region Senior Director, I have personal knowledge that new subscribers to TWC’s cable services receive a “welcome kit” at the time of their initial installation. The “welcome kit” includes the Subscriber Agreement, as well as, among other things, detailed information regarding TWC’s services, features and capabilities, instructions regarding use of the cable box, remote control, etc. In addition, subscribers may access the Subscriber Agreement on TWC’s website.

7. In March 2010, TWC introduced a new version of the Subscriber Agreement, which remains the effective agreement today. Among other changes, this version of the Subscriber Agreement contains an arbitration and class waiver provision from which subscribers may “opt out” if they elect to do so. *See* Ex. G at § 15. Section 15 of the Subscriber Agreement provides, in part:

(a) Our goal is to resolve Disputes fairly and quickly. However, if we cannot resolve a Dispute with you, then, except as described elsewhere in Section 15, each of us agrees to submit the Dispute to the American Arbitration Association for resolution under its Commercial Arbitration Rules or, by separate mutual agreement, to another arbitration institution. As an alternative, you may bring your claim in your local “small claims” court, if its rules permit it. . . .

(b) You may bring claims only on your own behalf, and not on behalf of any official or other person, or any class of people. Only claims for money damages may be submitted to arbitration; claims for injunctive orders or similar relief must be brought in a court. You may not combine a claim that is subject to arbitration under this Agreement with a claim that is not eligible for arbitration under this Agreement. The arbitrator will decide whether a dispute can be arbitrated. . . .

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2 (e) You may opt out of this agreement's arbitration provision. If you
3 do so, neither you nor TWC can require the other to participate in an
4 arbitration proceeding. To opt out, you must notify TWC in writing
within 30 days of the date that you first became subject to this
arbitration provision.

5 8. TWC made the current version of the Subscriber Agreement, with the
6 arbitration and class waiver provision, available online on its website in March
7 2010, and has included this version of the arbitration and class waiver provision in
8 its new subscribers' welcome kits since April 2010.

9 **TWC NOTIFIED SUBSCRIBERS OF THE OPT OUT PROVISION**

10 9. TWC started notifying its existing Greater Los Angeles Area
11 subscribers of the arbitration and class waiver provision, and their ability to opt
12 out, by inserting "statement messages" into billing statements for each subscriber.
13 Specifically, I directed employees under my supervision and control to insert the
14 following statement message on every subscriber's April or May 2010 billing
15 statement (the "Arbitration Statement Message"):

16 You have a new Time Warner Cable subscriber agreement which
17 contains an arbitration clause and other important terms. You can
18 review the new agreement and, if you wish, opt out of the arbitration
19 clause at <http://help.twcable.com/html/policies/html>.

20 10. To confirm the Arbitration Statement Message was included with
21 subscribers' bills, I reviewed the relevant Bill Message Request form. The Bill
22 Message Request form dated March 10, 2010, filled out by an employee on my
23 team, at my direction and under my supervision, confirms that my department
24 requested that the Arbitration Statement Message be included on the April bills of
25 subscribers residing in 207 SPAs. A true and correct copy of the March 10, 2010,
26 Bill Message Request Form is attached to the Appendix of Exhibits as **Exhibit H**.

27 11. I received confirmation from TWC's Information Systems department
28 that the data from the March 10, 2010, Bill Message Request Form was submitted

1 to CSG through its Communications Control System. I also received confirmation
2 from CSG that the Arbitration Statement Message was properly included on the
3 April 2010 bills for the 207 SPAs identified in the March 10, 2010, Bill Message
4 Request Form. In addition, I received from CSG a sample billing statement from
5 the April monthly cycle confirming that the Arbitration Statement Message was
6 included on the bills. A true and correct copy of the sample billing statement I
7 received from CSG, as confirmation that the Arbitration Statement Message ran on
8 the April billing statements, is attached to the Appendix of Exhibits as **Exhibit I**.

9 12. On April 7, 2011, I directed and approved the insertion of the
10 Arbitration Statement Message on the May 2011 billing statements for subscribers
11 in 17 SPAs who did not receive the message in April 2010. I received
12 confirmation from TWC's billing team that the Arbitration Statement Message ran
13 on the May 2011 billing statements sent to subscribers in the 17 SPAs that did not
14 receive the message in April 2010.

15 13. Since November 2010, every subscriber that signed a work order (for
16 initiation of service, repair, disconnection, or other service), was required to sign
17 his or her initials next to a box containing the following language:

18 My initials to the left indicate that I understand and
19 acknowledge that the Time Warner Cable Residential Services
20 Subscriber Agreement provides that the parties agree to resolve
21 certain disputes relating to that agreement through arbitration. I
22 acknowledge that I have the right to opt out of these arbitration
23 provisions for 30 days from the date they first applied to me and
24 that, if I do not do so, I am giving up various rights including the
25 right to trial by a jury.

26 14. In order to determine whether a specific subscriber received notice of
27 the new Subscriber Agreement containing the arbitration and class waiver
28 provision with the right to opt-out, and when each subscriber received such notice,

1 TWC would have to review the billing statements and signed work orders of each
2 subscriber's account.

3 I declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct. Executed on December 9 2011, at
5 Los Angeles, California.

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8 David Su
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